

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
 SACRAMENTO DIVISION

3 _____) Civil Action No. 2:05-CV-02205 LKK PAN
4 UNITED STATES OF AMERICA,)
5 Plaintiff,)
6 v.) [PROPOSED] CONSENT DECREE
7 CALIFORNIA OLIVE RANCH, INC.,)
8 Defendant.)
9 _____)

10 WHEREAS, Plaintiff, the United States of America, on behalf of the United States
11 Environmental Protection Agency (“EPA”), filed the Complaint herein against Defendant
12 California Olive Ranch, Inc. (“Defendant”), alleging that Defendant violated Sections 301(a) and
13 309(b) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311(a), 1319(b);

14 WHEREAS, the Complaint alleges that Defendant violated CWA Section 301(a) by
15 discharging dredged or fill material and/or controlling and directing the discharge of dredged or
16 fill material into waters of the United States at a ranch located at the intersection of Lone Tree
17 Road and Central House Road in Butte County, California (the “Site”) and more fully described
18 in the Complaint, without authorization by the United States Department of the Army (“the
19 Corps”);

20 WHEREAS, the Complaint alleges that on September 9, 2002, EPA issued to Defendant
21 an administrative order on consent in Docket No. CWA 404-09a-02a-001 (“AOC”), pursuant to
22 section 309(a) of the CWA, 33 U.S.C. § 1319(a), which directs Defendant to take actions to
23 mitigate impacts to waters of the United States at the Site;

24 WHEREAS, the Complaint seeks (1) to enjoin the discharge of pollutants into waters of
25 the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require
26 Defendant, at its own expense, to mitigate the damages caused by its unlawful activities; and (3)
27 to require Defendant to pay civil penalties as provided in 33 U.S.C. § 1319(d);

1 WHEREAS, this Consent Decree is intended to constitute a complete and final settlement
2 of the United States' claims under the CWA set forth in the Complaint regarding the Site;

3 WHEREAS, Defendant's purchase of three (3) mitigation credits from the Dove Ridge
4 Conservation Bank, as required by paragraph 17 of this Consent Decree, also satisfies
5 Defendant's obligation to purchase mitigation credits as required by section 1.a of "Amendment
6 to January 2003 Settlement Agreement between United States Fish and Wildlife Service and
7 California Olive Ranch, Inc.," dated June 23, 2005;

8 WHEREAS, the United States and Defendant agree that settlement of this case is in the
9 public interest and that entry of this Consent Decree is the most appropriate means of resolving
10 the United States' claims under the CWA against Defendant in this case;

11 WHEREAS, Defendant admits no fault or liability of any type, arising under the Clean
12 Water Act, Endangered Species Act, any other state or federal statute or regulation, common law
13 or otherwise, whether civil or criminal, regarding any allegations, or findings asserted or implied
14 by EPA or United States Fish and Wildlife Service, arising out of or related to any act, omission,
15 transaction, practice or activity which may or may not have been performed by Defendant; and

16 WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement
17 of the United States' claims against Defendant in this case, and that this Consent Decree
18 adequately protects the public interest in accordance with the CWA and all other applicable
19 federal law.

20 THEREFORE, before the taking of any testimony upon the pleadings, without further
21 adjudication of any issue of fact or law, and upon consent of the parties hereto by their
22 authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

23 I. JURISDICTION AND VENUE

24 1. This Court has jurisdiction over the subject matter of these actions and over the
25 parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33
26 U.S.C. § 1319(b).

27 2. Venue is proper in the Eastern District of California pursuant to CWA Section
28 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because Defendant conducts

1 business in this District, the subject property is located in this District, and the causes of action
2 alleged herein arose in this District.

3 3. The Complaint states claims upon which relief can be granted pursuant to
4 Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

5 II. APPLICABILITY

6 4. The obligations of this Consent Decree shall apply to and be binding upon
7 Defendant, its officers, directors, agents, employees and servants, and its successors and assigns
8 and any person, firm, association or corporation who is, or will be, acting in concert or
9 participation with the Defendant whether or not such person has notice of this Consent Decree.
10 In any action to enforce this Consent Decree against Defendant, Defendant shall not raise as a
11 defense the failure of any of its officers, directors, agents, employees, successors or assigns or
12 any person, firm or corporation acting in concert or participation with Defendant, to take any
13 actions necessary to comply with the provisions hereof.

14 III. SCOPE OF CONSENT DECREE

15 5. This Consent Decree shall constitute a complete and final settlement of all civil
16 claims for injunctive relief and civil penalties alleged in the Complaint against the Defendant
17 under CWA Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344
18 concerning the Site.

19 6. It is the express purpose of the parties in entering this Consent Decree to further
20 the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All obligations in this Consent
21 Decree or resulting from the activities required by this Consent Decree shall have the objective
22 of causing Defendant to achieve and maintain full compliance with, and to further the purposes
23 of, the CWA.

24 7. This Consent Decree is not and shall not be interpreted to be a permit or
25 modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33
26 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability
27 of the United States Army Corps of Engineers to issue, modify, suspend, revoke or deny any
28 individual permit or any nationwide or regional general permit, nor shall this Consent Decree

1 limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C.
2 § 1344(c).

3 8. This Consent Decree in no way affects or relieves Defendant of its responsibility
4 to comply with any applicable federal, state, or local law, regulation or permit.

5 9. This Consent Decree in no way affects the rights of the United States as against
6 any person not a party to this Consent Decree.

7 10. The United States reserves any and all legal and equitable remedies available to
8 enforce the provisions of this Consent Decree and applicable law.

9 11. Nothing in this Consent Decree shall constitute an admission of fact or law by any
10 party.

11 IV. SPECIFIC PROVISIONS

12 CIVIL PENALTIES

13 12. Defendant shall pay a civil penalty to the United States in the amount of Seventy
14 Thousand Dollars (\$70,000.00), within 30 days of entry of this Consent Decree.

15 13. Defendant shall make the above-referenced payment by FedWire Electronic
16 Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance
17 with current electronic funds transfer procedures, referencing U.S.A.O. file number
18 2005Z00860, EPA Region 9 and the DOJ case number (DJ # 90-5-1-4-17457). Payment shall be
19 made in accordance with instructions provided to the Defendant by the Financial Litigation Unit
20 of the United States Attorney's Office for the Eastern District of California. Any payments
21 received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next
22 business day.

23 14. Upon payment of the civil penalty required by this Consent Decree, Defendant
24 shall provide written notice, at the addresses specified in Section X of this Consent Decree, that
25 such payment was made in accordance with Paragraph 14.

26 15. Civil penalty payments pursuant to this Consent Decree (including stipulated
27 penalty payments under Section VIII) are penalties within the meaning of Section 162(f) of the
28 Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible

1 expenditures for purposes of federal law.

2 INJUNCTIVE RELIEF

3 16. In order to mitigate the environmental harm resulting from Defendant's alleged
4 violations of the CWA, within thirty (30) days of entry of this Consent Decree, Defendant shall
5 certify to EPA and the Department of Justice that it has purchased three (3.0) mitigation credits
6 at the Dove Ridge Conservation Bank ("Dove Ridge"). Such certification shall include a copy of
7 written acknowledgment of Defendant's purchase of the mitigation credits from Loafer Creek
8 LLC, which owns and operates Dove Ridge.

9 17. Defendant and its agents, successors and assigns are enjoined from discharging
10 any pollutant into waters of the United States in the future, unless such discharge complies with
11 the provisions of the CWA and its implementing regulations.

12 V. RETENTION OF RECORDS AND RIGHT OF ENTRY

13 18. Until one (1) year after entry of this Consent Decree, Defendant shall preserve
14 and retain all records and documents now in its possession or control or which come into its
15 possession or control that relate in any manner to the performance of the tasks in this Consent
16 Decree, regardless of any corporate retention policy to the contrary.

17 19. At the conclusion of the document retention period, Defendant shall notify the
18 United States at least sixty (60) days prior to the destruction of any such records or documents,
19 and, upon request by the United States, Defendant shall deliver any such records or documents to
20 EPA. The Defendant may assert that certain documents, records and other information are
21 privileged under the attorney-client privilege or any other privilege recognized by federal law. If
22 the Defendant asserts such a privilege, the Defendant shall provide the United States with the
23 following: (1) the title of the document, record, or information; (2) the date of the document,
24 record, or information; (3) the name and title of the author of the document, record, or
25 information; (4) the name and title of each addressee and recipient; (5) a description of the
26 subject of the document, record, or information; and (6) the privilege asserted by Defendant.
27 However, no documents, reports or other information created or generated pursuant to the
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requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

VI. DISPUTE RESOLUTION

20. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and Defendant affected by the dispute to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and Defendant cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fourteen (14) days after the end of the informal negotiations period, the Defendant files a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Defendant shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA, and that the Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

21. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. The Defendant shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Defendant shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree, and that the Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

22. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendant under this Consent Decree, except as provided in Paragraph 39 below regarding payment of stipulated penalties.

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VII. FORCE MAJEURE

23. Defendant shall perform the actions required under this Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Defendant, including its employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state or local permits.

24. If Defendant believes that a Force Majeure event has affected Defendant's ability to perform any action required under this Consent Decree, Defendant shall notify the United States in writing within fourteen (14) calendar days after the event at the addresses listed in Section IX. Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay; and
- D. any measures taken or planned by the Defendant to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendant may also provide to the United States any additional information that it deems appropriate to support its conclusion that a Force Majeure event has affected its ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

25. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendant shall coordinate with EPA to determine

1 when to begin or resume the operations that had been affected by any Force Majeure event.

2 26. If the parties are unable to agree whether the conditions constitute a Force
3 Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at
4 issue should be extended, any party may seek a resolution of the dispute under the procedures in
5 Section VII of this Consent Decree.

6 27. Defendant shall bear the burden of proving (1) that the noncompliance at issue
7 was caused by circumstances entirely beyond the control of Defendant and any entity controlled
8 by Defendant, including its contractors and consultants; (2) that Defendant or any entity
9 controlled by Defendant could not have foreseen and prevented such noncompliance; and (3) the
10 number of days of noncompliance that were caused by such circumstances.

11 VIII. STIPULATED PENALTIES

12 28. After entry of this Consent Decree, if Defendant fails to timely fulfill any
13 requirement of the Consent Decree, Defendant shall pay a stipulated penalty to the United States
14 for each violation of each requirement of this Consent Decree as follows:

- | | | | |
|----|----|--------------------------------|--------------------|
| 15 | A. | For Day 1 up to and including | \$500.00 per day |
| 16 | | Day 30 of non-compliance | |
| 17 | B. | For Day 31 up to and including | \$750.00 per day |
| | | 60 of non-compliance | |
| 18 | C. | For Day 61 and beyond | \$1,000.00 per day |
| | | of non-compliance | |

19 Any stipulated penalty accruing pursuant to this Consent Decree shall be payable upon demand
20 and due not later than 30 days after Defendant's receipt of the United States' written demand.

21 29. The United States may, in the unreviewable exercise of its discretion,
22 reduce or waive stipulated penalties otherwise due it under this Consent Decree.

23 30. Any disputes concerning the amount of stipulated penalties, or the underlying
24 violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant
25 to the Dispute Resolution provisions in Section VI and/or the Force Majeure provisions in
26 Section VII shall be resolved upon motion to this Court as provided in Paragraphs 29 and 30.

27 31. The filing of a motion requesting that the Court resolve a dispute shall stay
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1 Defendant's obligation to pay any stipulated penalties with respect to the disputed matter
2 pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties
3 shall continue to accrue from the first day of any failure or refusal to comply with any term or
4 condition of this Consent Decree. In the event that Defendant does not prevail on the disputed
5 issue, stipulated penalties shall be paid by Defendant as provided in this Section.

6 32. To the extent Defendant demonstrates to the Court that a delay or other non-
7 compliance was due to a Force Majeure event (as defined in Paragraph 32 above) or otherwise
8 prevails on the disputed issue, the Court shall excuse the stipulated penalties for that delay or
9 non-compliance.

10 33. In the event that a stipulated penalty payment is applicable and not made on time,
11 interest will be charged in accordance with the statutory judgment interest rate provided for in 28
12 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the
13 date the payment is made. The interest shall also be compounded annually.

14 34. Defendant shall make any payment of a stipulated penalty by FedWire Electronic
15 Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance
16 with current electronic funds transfer procedures, referencing U.S.A.O. file number
17 2005Z00860, EPA Region 9 and the DOJ case number (90-5-1-1-17457). Payment shall be
18 made in accordance with instructions provided to the Defendant by the Financial Litigation Unit
19 of the United States Attorney's Office for the Eastern District of California. Any payments
20 received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next
21 business day. Further, upon payment of any stipulated penalties, Defendant shall provide
22 written notice, at the addresses specified in Section IX of this Decree.

23 IX. ADDRESSES

24 35. All notices and communications required under this Consent Decree shall be
25 made to the parties through each of the following persons and addresses:

26 A. TO EPA:

27 (1) Gary Hess
28 Assistant Regional Counsel
United States Environmental Protection Agency

1 Region IX
2 75 Hawthorne St.
3 San Francisco, CA 94105
4 (415) 972-3906

5 (2) Paul Jones
6 United States Environmental Protection Agency
7 Region IX
8 75 Hawthorne St.
9 San Francisco, CA 94105
10 (415) 972-3470

11 B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

12 Pamela S. Tonglao, Attorney
13 Environmental Defense Section
14 Environment and Natural Resources Division
15 U.S. Department of Justice
16 P.O. Box 23986
17 Washington, D.C. 20026-3986
18 (202) 305-0897

19 C. TO DEFENDANT CALIFORNIA OLIVE RANCH:

20 George T. Kammerer, Attorney
21 Hefner, Stark & Marois, LLP
22 2150 River Plaza Dr., Suite 450
23 Sacramento, CA 95833-4136
24 (916) 925-6620

25 X. COSTS OF SUIT

26 36. Each party to this Consent Decree shall bear its own costs and attorneys' fees in
27 this action. Should Defendant subsequently be determined by the Court to have violated the
28 terms or conditions of this Consent Decree, Defendant shall be liable for any costs or attorneys'
fees incurred by the United States in any action against Defendant for noncompliance with or
enforcement of this Consent Decree.

30 XI. PUBLIC COMMENT

31 37. The parties acknowledge that after the lodging and before the entry of this
32 Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R.
33 § 50.7, which provides for public notice and comment. The United States reserves the right to
34 withhold or withdraw its consent to the entry of this Consent Decree if the comments received
35 disclose facts which lead the United States to conclude that the proposed judgment is

1 inappropriate, improper, or inadequate. The Defendant agrees not to withdraw from, oppose
2 entry of, or to challenge any provision of this Consent Decree, unless the United States has
3 notified the Defendant in writing that it no longer supports entry of the Consent Decree.

4 XII. CONTINUING JURISDICTION OF THE COURT

5 38. This Court shall retain jurisdiction over this action in order to enforce or modify
6 the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as
7 may be necessary or appropriate for construction or execution of this Consent Decree. During
8 the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to
9 construe and effectuate the Consent Decree.

10 XIII. MODIFICATION

11 39. Upon its entry by the Court, this Consent Decree shall have the force and effect of
12 a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take
13 effect unless signed by both the United States and the Defendant and approved by the Court.

14 XIV. EFFECTIVE DATE AND EFFECT OF ENTRY

15 40. The effective date of this Consent Decree shall be the date of its entry by the Court.

16 41. Upon entry of this Consent Decree, the obligations set forth in paragraphs 6 and 7 of
17 section IX of the EPA Administrative Order on Consent (“AOC”) for the Site (Docket No. CWA
18 404-09a-02a-001) shall automatically terminate. All obligations in the AOC pertaining to
19 “Preservation Site #2” shall also automatically terminate. The AOC is attached to this Consent
20 Decree as Appendix A. No other requirement of the AOC shall be affected by this Consent
21 Decree.

22 XV. TERMINATION

23 42. Upon receipt of the civil penalty required by this Consent Decree (including any
24 stipulated penalty payments under Section VIII) and receipt of acknowledgment from Loafer
25 Creek LLC (under paragraph 18, above) of the purchase of 3.0 mitigation credits at Dove Ridge,
26 the United States shall move the Court to dismiss the Complaint against Defendant.

27 43. This Consent Decree may be terminated by either of the following:

28 A. Defendant and the United States may at any time make a joint motion to the

1 Court for termination of this Decree or any portion of it; or

2 B. Defendant may make a unilateral motion to the Court to terminate this
3 Decree after each of the following has occurred:

4 1. Defendant has obtained and maintained compliance with all
5 provisions of this Consent Decree and the CWA for twelve (12) consecutive
6 months;

7 2. Defendant has paid all penalties and other monetary obligations
8 hereunder and no penalties or other monetary obligations are outstanding or owed
9 to the United States;

10 3. Defendant has certified compliance pursuant to subparagraphs 1 and
11 2 above to the Court and EPA; and

12 4. within forty-five (45) days of receiving such certification from the
13 Defendant, EPA has not contested in writing that such compliance has been
14 achieved. If EPA disputes Defendant's full compliance, this Consent Decree shall
15 remain in effect pending resolution of the dispute by the Parties or the Court.

16 IT IS SO ORDERED.

17 Dated and entered this _____ day of _____, 2005.

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19 _____
United States District Judge

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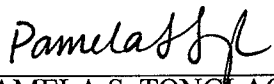
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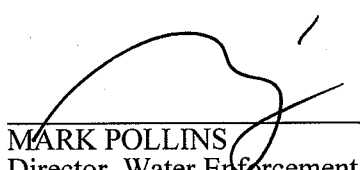
1 ON BEHALF OF THE UNITED STATES:
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3 KELLY A. JOHNSON
4 Acting Assistant Attorney General
5 Environment and Natural Resources Division
6

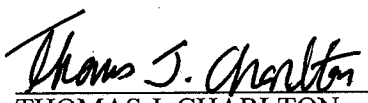
7 
8 PAMELA S. TONGLAO
9 United States Department of Justice
10 Environment and Natural Resources Division
11 Environmental Defense Section
12 P.O. Box 23986
13 Washington, D.C. 20026-3986
14 Telephone: (202) 305-0897
15 Facsimile: (202) 514-8865
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Dated: 10/27/05

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MARK POLLINS
Director, Water Enforcement Division
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
MC 2241A
Ariel Rios Building South
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dated: 10/27/05


THOMAS J. CHARLTON
Attorney Advisor, Water Enforcement Division
Office of Enforcement and Compliance Assurance
MC 2243A
Ariel Rios Building South
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dated: 10/27/05


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3
4 *for* Alejo Starns
5 WAYNE NASTRI
6 Regional Administrator
7 U.S. Environmental Protection Agency
8 Region IX
9 75 Hawthorne Street
10 San Francisco, CA 94105
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Dated: 18 October 2005

1 FOR DEFENDANT CALIFORNIA OLIVE RANCH, INC.:
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3 
4 PEDRO OLABARRIA

Dated: 01-09-2005

5 
6 GEORGE T. KAMMERER
7 Hefner, Stark & Marois LLP
8 2150 River Plaza Dr., Suite 450
9 Sacramento, CA 95833-4136

Dated: 09-09-2005

Appendix A

Administrative Order on Consent (Docket No. CWA 404-09a-02a-001)

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8 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 9
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10 In the Matter of:

11 California Olive Ranch, Inc.,

12 Respondent.

USEPA Docket No.
CWA 404-09a-02a-001

13
14 Proceeding Under Section 309(a)
15 of the Federal Clean Water Act,
33 U.S.C. § 1319(a), As Amended
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18 ADMINISTRATIVE ORDER ON CONSENT
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1 arising from, the Order. Specifically, Respondent agrees not to
2 contest a determination by the Regional Administrator, USEPA Region
3 IX, pursuant to Part IX, as to the final preservation and/or
4 mitigation requirements as specified in this Consent Order with
5 which Respondent agrees to comply.

6 3. USEPA's decisions or actions in entering into and pursuant to
7 this Consent Order are not subject to judicial review prior to the
8 United States' initiation of judicial action to compel Respondent's
9 compliance with this Consent Order.

10 11 III. DEFINITIONS

12 Unless defined herein, terms used in this Consent Order shall
13 have the meaning as assigned in the CWA or in regulations
14 promulgated by USEPA and the USACE under the CWA. The following
15 definitions shall apply to this Order:

16 1. "Consent Order" or "Order" shall mean this document, all
17 attachments hereto, all of its subsequent mutually agreed upon
18 modifications, and all submissions, including, but not limited to,
19 deliverables, plans, schedules, reports (other than progress
20 reports), maps, technical memoranda and specifications, which are
21 specified by this Order and approved by USEPA. Upon USEPA approval,
22 Respondent's submissions are incorporated and enforceable as part
23 of this Order. In case of inconsistency, this document and its
24 subsequent modifications shall control.

25 2. "USACE" shall mean the U.S. Army Corps of Engineers.

26 3. "USEPA" shall mean the U.S. Environmental Protection Agency.

27 4. "USFWS" shall mean the U.S. Fish and Wildlife Service.

28 5. "Respondent" shall mean California Olive Ranch, Inc., its

1 principals, owners, partners, officers, directors, shareholders,
2 agents, employees, representatives, and all persons, independent
3 contractors, contractors, attorneys and consultants of all types,
4 acting in concert with Respondent, and the successors, heirs and
5 assigns of all of them.

6 6. "Parties" shall mean the USEPA and Respondent.

7 7. "Day" shall mean a calendar day unless otherwise specified to
8 be a working day. "Working day" shall mean a day other than a
9 Saturday, Sunday, or federal legal holiday. In computing a
10 prescribed period of time, the day of the event shall not be
11 included. If a stated time period expires on a Saturday, Sunday or
12 federal legal holiday, it shall be extended to include the next
13 working day.

14 8. "Site" shall mean the approximately 733+/- acres at California
15 Olive Ranch ("COR")-located at the northeast corner of Lone Tree
16 and Central House Roads, in Butte County, California, as depicted
17 on the attached map, (Figure 1). Within this 733+/- acres are
18 certain areas which USEPA has found to be regulated as waters of
19 the United States under the CWA and to have been disturbed by
20 Respondent's activities.

21 9. "Preservation Site #1" is contained entirely within the
22 "Site", and shall mean all portions of an approximately one hundred
23 fifty-six (156)+/- acre area containing approximately forty and
24 thirty-five hundredths (40.35)+/- acres of waters of the United
25 States, including approximately twenty-nine and seventy-seven
26 hundredths (29.77)+/- acres of vernal pools and vernal swales. An
27 "Agreement to Record Parcel Map and Declaration" was made as of
28 April 12, 2001, by and between COR, the USFWS, and USEPA. Various

1 provisions related to the property are set forth in that agreement,
2 including a provision that COR may be given appropriate wetland and
3 species habitat preservation credit for all wetland and species
4 habitat acreage established in the agreement and a referenced
5 declaration, and that such credit may be applied in full measure
6 towards any mitigation requirements which might subsequently be
7 required by USEPA and/or the USFWS. Respondent shall dedicate a
8 conservation easement over Preservation Site #1, as required in
9 Part IX below. Preservation Site #1 is depicted in Figure 1. A two
10 and two tenths- (2.2-)acre seasonal wetland will be created by
11 Respondent within Preservation Site #1 in the location and
12 configuration depicted in Figure 2 and as indicated within the
13 Preservation/ Mitigation Program.

14 10. "Preservation Site #2 shall mean a yet-to-be-determined
15 location, no less than forty (40) acres in size and containing five
16 percent (5%) or greater density of vernal pools and/or vernal
17 swales located outside of the boundaries of the seven hundred
18 thirty-three (733)+/- acre COR Site, within the "Vernal Pool
19 Planning Area", depicted in Figure 3, which site Respondent also
20 intends to protect under a conservation easement as provided for in
21 Part IX, in addition to protection of Preservation Site #1.

22 11. "Avoidance Area" shall mean that area, depicted in Figure 4,
23 within the COR site surrounded by olive orchards consisting of
24 approximately forty-eight (48)+/- acres which contain approximately
25 eleven (11)+/- acres of vernal pools, vernal swales, seasonal
26 wetlands, and a creek corridor, which Respondent left unplanted
27 when Respondent planted the olive orchard. The "Avoidance Area",
28 which was deep-ripped and, in part, disced, is to be protected as

1 described in the Preservation/Mitigation Program. The parties
2 agree that the natural values on these preservation areas described
3 in Paragraphs III. 9, 10, and 11, will be considered mitigation for
4 adverse impacts to waters of the United States including all vernal
5 pool and swale habitat under USEPA jurisdiction.

6 12. "Preservation/Mitigation Program" shall mean those
7 deliverables and activities to be produced and/or undertaken by
8 Respondent for purposes of implementation of the mitigation
9 measures described in this Consent Order which off-set temporal and
10 permanent habitat losses resulting from Respondent's activities. It
11 includes the Preservation/Mitigation Program provided for in
12 Paragraphs IX.9 and IX.10 and Part X.

13 13. "Work" shall mean all activities Respondent is required to
14 undertake and accomplish under this Consent Order.

16 IV. PARTIES BOUND

17 1. This Consent Order shall be binding upon Respondent.

18 2. Respondent shall provide a copy of this Consent Order to any
19 successor in interest to its control, operation, or any other
20 interest in all or any portion of the Disturbed Site, Preservation
21 Site #1, Preservation Site #2, or the Avoidance Area, at least
22 thirty (30) days prior to the transfer, and shall simultaneously
23 notify USEPA in writing that such notice has been given. Within
24 fourteen (14) days after the effective date of this Consent Order
25 or the date of contracting, whichever is later, Respondent shall
26 provide a copy of this Consent Order to all contractors and/or
27 consultants they retain to perform any of the Work. Respondent
28 shall condition the transfer of control, operation or any other

1 interest in any portion of the Site, Preservation Site #1,
2 Preservation Site #2, or the Avoidance Area, and any contract
3 related to the performance of the Work, upon the successful
4 execution of this Consent Order. No transfer or contract shall in
5 any way affect Respondent's obligation to comply fully with all the
6 terms and conditions of this Consent Order unless agreed upon in
7 writing by USEPA.

8 3. The undersigned signatory for Respondent certifies that he is
9 authorized to execute this Consent Order and legally bind
10 Respondent.

11 V. STATEMENT OF PURPOSE

12 1. The parties enter into this Consent Order to mitigate and
13 compensate for environmental and habitat losses caused by
14 discharges of fill material to waters of the United States at COR,
15 Butte County, California, by implementing a comprehensive program,
16 set forth in Part IX below, of preservation, creation, and
17 monitoring of aquatic resources.

18 VI. FINDINGS OF FACT

19
20 1. Respondent is now and, at all times mentioned herein, is a
21 legal entity and/or person.

22 2. Respondent owns real property in Butte County as depicted in
23 Figure 1. This property ("COR Site" or "the Site") consists of
24 approximately seven hundred thirty-three (733)+/- acres and is
25 located at the northeast corner of Lone Tree and Central House
26 Roads approximately seven miles east of Gridley, California.

27 3. USEPA has found, and Respondent denies, that Respondent
28 undertook activities that resulted in the discharge of fill

1 material to waters of the United States including vernal pools and
2 vernal swales on the Site.

3 4. USEPA has estimated that the areal extent of waters of the
4 United States on the Site was approximately ninety-three and sixty-
5 seven hundredths (93.67)+/- acres, including approximately sixty-
6 five and forty-two hundredths (65.42)+/- acres of vernal pools,
7 vernal swales or vernal pool complexes. USEPA has estimated that
8 the activities resulted in adverse impacts to approximately fifty-
9 three and thirty-two hundredths (53.32)+/- acres of waters of the
10 United States, of which thirty-five and sixty-five hundredths
11 (35.65)+/- acres are vernal pools, vernal swales or vernal pool
12 complexes at the Site. Respondent does not accept USEPA's estimate
13 and asserts that the areal extent of waters could not have exceeded
14 twenty-five and forty-eight hundredths (25.48)+/- acres of waters,
15 and, if adverse impacts occurred at all, impacts could not have
16 exceeded fourteen and forty-eight hundredths (14.48)+/- acres of
17 waters because Respondent avoided eleven (11)+/- acres of the
18 twenty-five and forty-eight hundredths (25.48)+/- acres of waters
19 within the approximately forty-eight (48)+/- acre Avoidance Area
20 within the olive orchard including an average fifty- (50-) foot
21 buffer strip thereto. While Respondent does not accept USEPA's
22 determination of the areal extent of waters of the United States,
23 nor does Respondent accept that its activities resulted in the
24 discharge of dredged and/or fill material to waters of the United
25 States on the Site, for purposes of this Consent Order and for
26 determining the appropriate scope of the Preservation Sites,
27 Avoidance Area and Preservation/Mitigation Program, and only for
28 those purposes, the Respondent agrees to adopt the USEPA estimate

1 that the Respondent's activities resulted in the discharge of
2 dredged and/or fill material in waters that adversely affected
3 fifty-three and thirty-two hundredths (53.32)+/- acres of waters of
4 the United States at the Site. As discussed below in Part IX,
5 Respondent reserves the right to contest the areal extent of waters
6 of the United States and the extent of the adverse affects to
7 waters of the United States at the COR Site.

8 5. The Respondent did not apply for a permit under section 404 of
9 the CWA to discharge dredged or fill material to some or all of the
10 regulated areas which USEPA finds to be waters of the United States
11 at the Site prior to conducting the activities which USEPA has
12 found to constitute the discharge of fill material to waters of the
13 United States including vernal pools and vernal swales on the Site.

14 6. USEPA finds and Respondent denies that Respondent engaged in
15 deep-ripping, disking, plowing and other soil preparation
16 activities within regulated waters of the United States including
17 vernal pools and vernal swales for the purpose of planting and
18 operating an olive orchard to produce olive oil for sale.
19 Respondent asserts that since the activities it conducted were not
20 regulated by the Clean Water Act, it was not necessary for
21 Respondent to obtain a permit for said activities. Respondent makes
22 these assertions to clarify Respondent's position for the record,
23 not as a basis for challenging the jurisdictional foundation for
24 this Consent Order.

25 7. USEPA has received: (a) financial statements for California
26 Olive Ranch, Inc. which indicate net operating losses in 1999,
27 2000, and 2001, in the amounts, respectively, of \$12,384, \$34,340
28 and \$32,049; (b) representations from COR that it has operated at a

1 loss for every year that it has been in existence, and will
2 continue to operate at a loss until at least 2007; and (c) other
3 representations from COR regarding its cash balance and other
4 assets. USEPA has relied upon these financial statements and
5 representations when determining to execute this Consent Order.

6 8. USEPA issued a "Findings of Violation and Order" ("Violation
7 Order") to Respondent, dated February 15, 2002, pursuant to
8 Sections 308 and 309 of the CWA. The Parties intend, by this
9 Consent Order, to fulfill the compliance requirements of the
10 Violation Order. Accordingly, the requirements of the Violation
11 Order are withdrawn.

12 13 VII. USEPA CONCLUSIONS OF LAW AND DETERMINATIONS

14 1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits "the
15 discharge of any pollutant by any person" into a "navigable water,"
16 or "water of the United States," except in compliance with, among
17 other things, a permit issued under sections 402 and/or 404 of the
18 CWA. Except as in compliance with sections 402 and 404, "the
19 discharge of any pollutant by any person shall be unlawful".

20 2. Respondent is a "person" as defined by Section 502(5) of the
21 CWA, 33 U.S.C. § 1362(5).

22 3. The Site described in Section VI above includes "waters of the
23 United States" as defined under federal regulations implementing
24 Section 502(7) of the CWA and 40 C.F.R. §§ 122.2 and 230.3; 33
25 C.F.R. § 328.3.

26 4. The fill materials described in Section VI above are
27 "pollutants" under Section 502(6) of the CWA, 33 U.S.C § 1362(6) .

28 5. Placing pollutants within the waters of the U.S. at the COR

1 Site is a "discharge of pollutants" under Section 502(12) of the
2 CWA, 33 U.S.C. §1362(12).

3 6. By discharging pollutants into waters of the United States
4 without a permit under the CWA, Respondent has violated Section
5 301(a) of the CWA, 33 U.S.C. § 1311.

6 7. Respondent denies each and every conclusion of law and
7 determination set forth in this Consent Order.

8
9 VIII. CESSATION OF UNAUTHORIZED DISCHARGES

10 1. Respondent shall not discharge pollutants into any waters of
11 the United States except in compliance with an appropriate
12 authorization under the CWA. Nothing in this paragraph shall limit
13 Respondent's rights to contest a determination by USEPA or USACE
14 that a particular activity requires authorization.

15
16 IX. WORK TO BE PERFORMED

17 1. Respondent shall take all necessary actions to complete the
18 Work as set forth in the Preservation/Mitigation Program. The
19 Preservation/Mitigation Program is enforceable under this Consent
20 Order.

21 2. The purpose of the Preservation/Mitigation Program required
22 under this Consent Order is to preserve waters of the United
23 States, including vernal pool and other wetland functions,
24 typically associated with Butte County wetland habitats, as agreed
25 upon by the parties as set forth in the Preservation/Mitigation
26 Program. If agreed to by the parties, the Preservation/Mitigation
27 Program may, in addition, include a component of creation,
28 restoration and enhancement to aquatic functions.

1 3. Respondent shall comply with the Declaration of Restrictions
2 recorded on May 15, 2001, and with the Agreement to Record Parcel
3 Map and Declaration dated April 12, 2001.

4 4. Within up to one hundred twenty (120) days from the effective
5 date of this Consent Order, Respondent shall dedicate a
6 conservation easement over Preservation Site #1 to a third party
7 approved by USEPA (with USFWS approval), protecting this site in
8 perpetuity, consistent with the May 15, 2001, Declaration of
9 Restrictions and the April 12, 2001, Agreement to Record Parcel Map
10 and Declaration and provisions of paragraph IX.10. Respondent
11 shall submit to USEPA and USFWS information identifying the third
12 party to which Respondent intends to dedicate this conservation
13 easement over Preservation Site #1 within sixty (60) days from the
14 effective date of this Consent Order. Within thirty (30) days of
15 USEPA approval of the third party, Respondent shall dedicate the
16 conservation easement as provided in the May 15, 2001, Declaration
17 of Restrictions and the April 12, 2001, Agreement to Record Parcel
18 Map and Declaration. If USEPA notifies Respondent that USEPA does
19 not approve the third party proposed by Respondent, Respondent
20 shall have thirty (30) days to submit information identifying a
21 different third party for purposes of satisfying the requirements
22 of this paragraph IX.4. Respondent shall provide dedicated funding
23 for perpetual management of the site and shall develop and
24 implement a management plan to ensure management of the site in
25 perpetuity. The management plan shall reflect the use restrictions
26 provided in the Declaration of Restrictions, dated May 15, 2001.
27 The management plan and endowment shall be subject to USEPA and
28 USFWS approval.

1 5. The purpose of Preservation Site #1 is to preserve and protect
2 in perpetuity approximately one hundred fifty-six (156)+/- acres of
3 land. Various provisions related to Preservation Site #1 are set
4 forth in "Agreement to Record Parcel Map and Declaration",
5 referenced above, including a provision that COR may be given
6 appropriate wetland and species habitat preservation credit for all
7 wetland and species habitat acreage established in the agreement
8 and a referenced declaration, and that such credit may be applied
9 in full measure towards any mitigation requirements which might
10 subsequently be required by USEPA and/or the USFWS. USEPA finds
11 that conservation and protection of the approximately forty and
12 thirty-five one hundredths (40.35)+/- acres of waters of the United
13 States including the approximately twenty-nine and seventy-seven
14 one hundredths (29.77)+/- acres of vernal pools and swales within
15 Preservation Site #1 is appropriate and practicable mitigation for
16 the temporal and permanent loss of the waters of the United States
17 at the Site. Preservation Site #1 is depicted in Figure 1.
18 Respondent will also create approximately two and two-tenths
19 (2.2)+/- acres of seasonal wetland habitat on Preservation Site #1
20 to compensate for the impacts to functions of waters of the United
21 States which USEPA finds to have resulted from Respondent's
22 activities that are the subject of this Consent Order. Respondent
23 contends that its activities have not adversely affected functions
24 of waters of the United States on the Site.

25 6. Respondent shall acquire by purchase or through easement grant
26 and shall dedicate a conservation easement over yet-to-be-
27 determined off-site land to be known as Preservation Site #2, which
28 shall consist of land parcel(s) not less than a total of forty (40)

1 acres in size and containing not less than five percent (5%)
2 density of vernal pools and/or vernal swales that constitute
3 habitat for listed vernal pool crustacean species. Parcels
4 proposed to meet these requirements must be approved by the USEPA
5 and USFWS prior to acquisition. USEPA agrees to conduct a site
6 assessment and make a determination of the acceptability of
7 Preservation Site #2 within thirty (30) days of receipt of an
8 aerial photograph and wetland assessment from Respondent. Within
9 nine (9) months from the effective date of this Consent Order,
10 Respondent shall execute an option contract for purchase of a
11 conservation easement or fee simple interest in Preservation Site
12 #2. Within eighteen (18) months from the effective date of this
13 Consent Order, Respondent shall close escrow upon, or otherwise
14 finalize acquisition of, Preservation Site #2, unless that time
15 period is extended by USEPA and USFWS should an option to purchase
16 or other substantial progress towards the acquisition of said land
17 be presented by Respondent to USEPA and USFWS.

18 7. The purpose of Preservation Site #2 is to preserve and protect
19 in perpetuity not less than forty (40) acres of land containing
20 five percent (5%) or greater densities of vernal pools and/or
21 vernal swales. Respondent shall prepare and implement a plan
22 providing for management of Preservation Site #2 in perpetuity, and
23 shall dedicate funding for this perpetual management. The plan and
24 endowment shall be subject to review and approval by USEPA and
25 USFWS.

26 8. The purpose of the Avoidance Area is to protect approximately
27 forty-eight (48)+/- acres of land containing approximately eleven
28 (11)+/- acres of vernal pools, vernal swales, seasonal wetlands and

a creek corridor. The Avoidance Area shall be protected as specified within the Preservation/Mitigation Program.

9. The Preservation/Mitigation Program and the granting of the conservation easements for Preservation Site #1 and Preservation Site #2, shall be incorporated and made enforceable as part of this Consent Order. Failure to comply fully with the Preservation/Mitigation Program, including any and all of its components, or with the granting of the conservation easements for Preservation Site #1 and Preservation Site #2 shall be deemed non-compliance with this Consent Order.

10. The Preservation/Mitigation Program shall include the following elements:

a. Respondent shall grant conservation easements for Preservation Site #1 and Preservation Site #2 to an entity approved by USEPA and USFWS. The easement holder, and any subsequent transferee of the easement shall receive a copy of this Consent Order.

b. The terms of the conservation easements shall be subject to USEPA and USFWS approval, and shall, at a minimum, provide that Preservation Site #1 and Preservation Site #2 are to be managed for the benefit of the sites' habitat functions and values, and in particular for the benefit of vernal pool ecosystems at the sites. The easement holder(s) will have the authority to restrict as necessary or prevent uses incompatible with these management goals. Respondent shall provide dedicated funding to ensure management of the preserves in perpetuity. The management plans will restrict activities as provided in the Declaration of Restrictions and

1 shall provide for monitoring and protection of the preserves
2 and their habitat functions and values. The endowment and
3 management plans shall be subject to the approval of USEPA and
4 USFWS. USEPA shall be identified as an intended third party
5 beneficiary of the grant of the conservation easement on
6 Preservation Site #1 and Preservation Site #2, and shall be
7 provided notice of and the right to approve any transfer of
8 the conservation easement.

9 c. Respondent shall implement controls on access to
10 Preservation Site #1 and Preservation Site #2 sufficient to
11 minimize disturbance to habitat functions consistent with the
12 Declaration of Restrictions.

13 d. Respondent shall implement best management practices to
14 minimize the influence of excessive amounts of sedimentation
15 and agricultural chemicals onto the preservation sites and
16 avoidance areas, including installation of on-property
17 vegetated buffer strips adjacent to Wyandotte Creek and the
18 unnamed dotted blue drainage denoted on the United States
19 Geological Survey's 1:24000 topographic map entitled "Honcut,
20 Calif.". Respondent shall conduct riparian habitat
21 improvements along Wyandotte Creek consisting of willow
22 plantings as described in the Preservation/Mitigation Program.

23 e. Respondent shall provide sufficient dedicated funding in
24 a total amount of not less than sixty thousand dollars
25 (\$60,000,000) to ensure that the management requirements of
26 the Preservation/Mitigation Program are implemented in
27 perpetuity.

28 f. Respondent shall submit a report for approval to USEPA

1 and USFWS certifying Respondent's compliance with the
2 requirements of the Preservation/Mitigation Program.

3 11. Notwithstanding any review, suggestions, comments, or approval
4 by USEPA, USFWS, USACE, or other governmental entities, unless
5 otherwise agreed by USEPA, Respondent shall remain responsible for
6 the full and successful implementation of the
7 Preservation/Mitigation Program and for achieving and maintaining
8 full compliance with this Consent Order, the CWA, and any
9 applicable laws, regulations and permits.

10
11 X. PRESERVATION/MITIGATION PROGRAM WORK QUALIFICATIONS

12 1. All Preservation/Mitigation Program work shall be done by and
13 under the supervision of persons with sufficient education,
14 experience and expertise for the work.

15 2. Respondent shall, within thirty (30) days of selecting its
16 general contractor for the Preservation/Mitigation Program work
17 (i.e., creation), provide USEPA with information identifying the
18 contractor, the names, titles and qualifications of the
19 contractor's designated project manager(s) used by Respondent or
20 their contractor to perform work related to the
21 Preservation/Mitigation Program. Respondent shall notify USEPA in
22 writing of any subsequent changes or additions to this information.

23
24 XI. MODIFICATION OF CONSENT ORDER

25 1. USEPA may, after consultation with Respondent, make a
26 preliminary determination that tasks in addition to those defined
27 in the Preservation/Mitigation Program, including any approved
28 modifications, are necessary to accomplish the purposes of the

1 Preservation/Mitigation Program as set forth in Part IX above.
2 USEPA shall notify Respondent of its preliminary determination in
3 writing and Respondent shall have thirty (30) days from receipt to
4 submit a written response.

5 2. Modification of this Consent Order shall be in writing and
6 shall take effect only when agreed upon and signed by all the
7 parties.

8 9 XII. PROGRESS MEETINGS AND REPORTS

10 1. Respondent shall meet or confer by phone with USEPA as
11 frequently as USEPA requests, during the initiation, conduct, and
12 completion of all habitat creation work under the Preservation/
13 Mitigation Program to discuss the technical aspects of the
14 Preservation/Mitigation Program, and any anticipated problems or
15 new issues.

16 17 XIII. ACCESS TO SITE AND DATA

18 1. At USEPA's written request, Respondent shall submit requested
19 results or data relative to the Preservation/Mitigation Program
20 within seven (7) days from receipt of the results or data by
21 Respondent.

22 2. Respondent shall notify USEPA in writing at least fifteen (15)
23 days prior to conducting significant events (as defined in the
24 Preservation/Mitigation Program) in preparation for or in
25 accordance with the Preservation/Mitigation Program.

26 3. This Consent Order shall in no way affect USEPA's authority to
27 enter, inspect, sample or monitor compliance under any law, permit,
28 court order or agreement and Respondent shall use their best

1 efforts to arrange for access by USEPA or its authorized
2 representatives for determining compliance with this Consent Order
3 until termination of this Consent Order. For purposes of this
4 Consent Order, USEPA's authorized representatives shall include all
5 USEPA employees and contractors and such other persons as USEPA may
6 designate.

7
8 XIV. DESIGNATED PROJECT COORDINATORS

9 1. The parties have designated their respective Project
10 Coordinators as follows:

11
12
13 A. For USEPA:

14 Paul Jones (W-3-3)
15 U.S. Environmental Protection Agency, Region 9
16 Water Division
17 75 Hawthorne Street
18 San Francisco, California 94105
19 (Tel) (415) 972-3470
20 (Fax) (415) 947-3537
21 jones.paul@epa.gov

22 B. For Respondent:

23 Michael Denny
24 California Olive Ranch, Inc.
25 1528 Colusa Avenue, Suite B
26 Yuba City, CA 95993
27 (Tel) (530) 751-5900
28 (Fax) (530) 751-5955
mdenny@cal-olive.com

2. The Project Coordinators shall be responsible for overseeing
the implementation of this Consent Order and receiving
communications, which include, but are not limited to, all
documents, reports, comments, approvals, and other correspondence
submitted or exchanged under this Consent Order.

1 3. USEPA and Respondent each may change their Project Coordinator
2 by giving the other party ten- (10-)day advance written notice.

3 4. Respondent's Project Coordinator may assign a representative,
4 or alternate Project Coordinator, including a contractor, to serve
5 as site representative for oversight of completion of the
6 Preservation/Mitigation Program work.

7 5. USEPA may arrange for a qualified person not on USEPA staff to
8 assist in its oversight and review of the implementation of the
9 Preservation/Preservation/Mitigation Program. The person may
10 observe work and make inquiries but is not authorized to modify
11 this Consent Order, including the Preservation/Mitigation Program.

12
13
14 XV. SUBMISSIONS AND NOTIFICATIONS

15 1. All submissions required by this Consent Order shall be signed
16 by Respondent's principal executive officer, or by that person's
17 duly authorized representative. The authorization must be in
18 writing and specify either an individual or a position having
19 responsibility for the overall operation of the activities being
20 reported or for Respondent's environmental matters.

21 2. The person signing Respondent's submissions shall make the
22 following certification:

23 I certify under penalty of law that the information submitted
24 is true and correct to the best of my knowledge and belief. I
25 am aware that there are significant penalties for submitting
26 false information, including, but not limited to, the
possibility of fines and imprisonment for knowing violations
under § 309 of the Clean Water Act, 18 U.S.C. § 1001, and
other relevant federal statutes.

27 3. Unless otherwise specified or requested by USEPA, Respondent
28 shall provide an original and one copy of each deliverable required

1 under this Consent Order by first-class mail to USEPA's Project
2 Coordinator.

3 4. Submissions by Respondent shall be deemed made on the date
4 they are postmarked.

5
6 XVI. RECORD PRESERVATION

7 1. Respondent shall preserve and retain, and shall instruct their
8 contractors, subcontractors and any other person acting on their
9 behalf, to preserve and retain all records and documents that
10 relate in any manner to the Site and/or Preservation Sites #1 and
11 #2, for five (5) years after termination of this Consent Order.
12 Upon termination of the five- (5-)year period, Respondent shall
13 notify USEPA at least ninety (90) days prior to the scheduled
14 destruction of the documents. If USEPA requests that the documents
15 be saved, Respondent shall, at no cost to USEPA, give USEPA the
16 documents or copies of the documents.

17
18 XVII. DELAY OF PERFORMANCE/FORCE MAJEURE

19 1. "Force Majeure," for purposes of this Consent Order, is any
20 event entirely beyond the control of Respondent or any entity
21 controlled by Respondent, including its contractors, consultants
22 and subcontractors, that delays or prevents performance of any
23 obligation under this Consent Order notwithstanding Respondent's
24 best efforts to avoid the delay. The best efforts requirement
25 includes using best efforts to anticipate any such event and
26 minimize the delay caused by any such event to the greatest extent
27 practicable. Examples of events that are not force majeure events
28 include, but are not limited to, increased costs or expenses of any

1 work to be performed under this Consent Order, financial or
2 business difficulties of Respondent, and normal inclement weather.

3 2. If any event may occur or has occurred that may delay the
4 performance of any obligation under this Consent Order, whether or
5 not caused by a force majeure, Respondent shall notify by telephone
6 the USEPA Project Coordinator or, in his or her absence, the
7 Director of the Water Division, USEPA Region 9, within three (3)
8 business days of when Respondent knew that the event might cause a
9 delay. Within fifteen (15) days thereafter, Respondent shall
10 provide in writing the reasons for the delay, the anticipated
11 duration of the delay, the measures taken or to be taken to prevent
12 or minimize the delay, a timetable by which those measures will be
13 implemented, and whether, in Respondent's opinion, such event may
14 cause or contribute to an endangerment to public health, welfare or
15 the environment. Respondent shall exercise their best efforts to
16 avoid or minimize any delay and any effects of a delay. Failure to
17 comply with the notice requirements of this paragraph shall
18 preclude Respondent from asserting any claim of force majeure.

19 3. If USEPA agrees that an actual or anticipated delay is
20 attributable to force majeure, the time for performance of the
21 obligation shall be extended by written agreement of the parties.

22 4. Respondent shall have the burden of demonstrating, by a
23 preponderance of the evidence, that the actual or anticipated delay
24 has been or will be caused by a force majeure event, that the
25 duration of the delay was or will be warranted under the
26 circumstances, that Respondent did exercise or is using its best
27 efforts to avoid and mitigate the effects of the delay, and that
28 Respondent complied with the requirements of this section.

1
2 XVIII. FAILURE TO COMPLY WITH CONSENT ORDER

3 1. USEPA reserves all available legal and equitable remedies to
4 enforce this Consent Order, and the right to seek recovery of any
5 costs and attorney fees incurred by USEPA in any actions against
6 Respondent for non-compliance with this Consent Order. Nothing in
7 this Consent Order shall in any way limit Respondent's rights to
8 recover attorney fees and costs consistent with applicable law.

9 2. Failure to comply with this Consent Order is a violation of
10 the CWA. Such violation may subject Respondent to injunctive relief
11 under Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and civil
12 penalties under Section 309(d) of the CWA, 33 U.S.C. § 1319(d). In
13 addition, a knowing violation may be punishable by a fine or
14 imprisonment under section 309(c) of the CWA, 33 U.S.C. §
15 1319(c) (1).
16

17 XIX. SCOPE OF CONSENT ORDER

18 1. This Consent Order is not a permit under the CWA, nor shall it
19 in any way relieve or affect Respondent's obligations under the
20 CWA, or any other applicable federal, state or local laws,
21 regulations and permits. USEPA finds that Respondent's compliance
22 with the provisions of this Consent Order will satisfy the
23 objectives of the Clean Water Act and provide adequate and
24 appropriate injunctive relief with respect to Section 404 of the
25 Act as applicable to Respondent's activities at the Site that are
26 the subject of this Consent Order.

27 2. This Consent Order shall in no way affect the rights of USEPA
28 against any person not a party hereto.

1 3. This Consent Order does not relieve COR from any requirements
2 under the Endangered Species Act nor prejudice any enforcement
3 action brought under that Act.
4

5 XX. NO ADMISSION OF FAULT OR LIABILITY

6 1. By executing this Consent Order and performing the
7 obligations described herein, Respondent admits no fault or
8 liability of any type, arising under the Clean Water Act,
9 Endangered Species Act, any other state or federal statute or
10 regulation, common law or otherwise, whether civil or criminal,
11 regarding any allegations, or findings asserted or implied by USEPA
12 or USFWS, arising out of, or related to, any act, omission,
13 transaction, practice or activity which may or may not have been
14 performed by Respondent.
15

16 XXI. SEVERABILITY

17 The provisions of this Consent Order shall be severable. Should any
18 provision be declared by a court of competent jurisdiction to be
19 unenforceable, the remaining provisions shall remain in full force
20 and effect.
21

22 XXII. TERMINATION AND SATISFACTION

23 This Consent Order shall terminate when USEPA issues a written
24 approval of Respondent's written certification that Respondent has
25 fully completed all Work required under this Consent Order,
26 including any additional tasks which USEPA has determined to be
27 necessary in accordance with Section XI above. Respondent's
28 certification of completion shall comply with requirements set

1 forth in Section XV above.

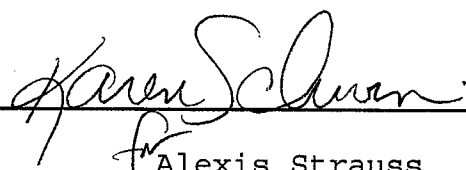
2
3 XXIII. EFFECTIVE DATE

4 This Consent Order shall take effect upon signature by all parties.

5
6 IT IS SO AGREED AND ORDERED:

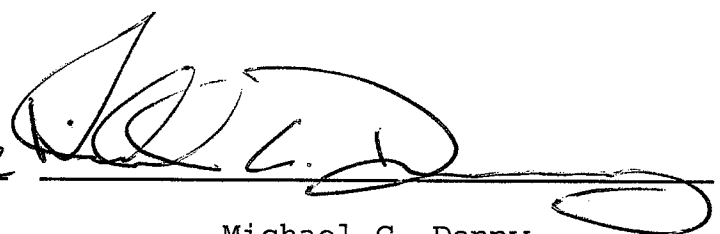
7
8 For UNITED STATES
9 ENVIRONMENTAL PROTECTION AGENCY
10 REGION 9
11

12
13 Dated: 9/9/02


14 Alexis Strauss
15 Water Division
16
17

18 For RESPONDENT
19 California Olive Ranch, Inc.
20

21
22 Dated: August 30, 2002


23 Michael C. Denny
24 Operations Manager
25
26
27
28

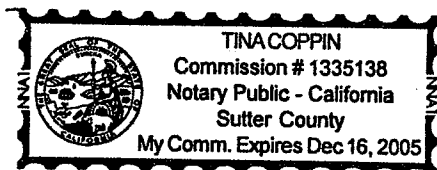
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Sutter } ss.

on Aug 30, 2002 before me, Tina Coppin Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Michael C. Penny
Name(s) of Signer(s)

☐ personally known to me
☒ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Tina Coppin
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Administrative Order on Consent

Document Date: _____ Number of Pages: 27

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**
Top of thumb here

CALIFORNIA OLIVE RANCH, INC.

**WRITTEN CONSENT OF
THE SOLE DIRECTOR**

The undersigned, being the Sole Director of California Olive Ranch, Inc., a California corporation (the "Corporation") pursuant to Section 307(b) of the California Corporations Code and pursuant to Article III, Section 13 of the Corporation's Bylaws, does hereby take the following actions and adopts the following resolutions by written consent, effective as of August 6, 2002:

WHEREAS, it is deemed to be in the best interest of the Corporation that the following resolution be approved and ratified;

NOW, THEREFORE, be it

RESOLVED, that Michael C. Denny, Operations Manager of the Corporation, be specifically empowered and authorized to sign and execute on behalf of the Corporation, the following documents:

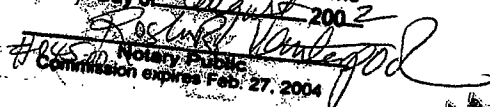
1. The Settlement Agreement Between U.S. Fish and Wildlife Service (FWS) and California Olive Ranch, Inc., including any ancillary documents thereto;
2. The United States Environmental Protection Agency Region 9 (EPA), Administrative Order On Consent, in the matter of California Olive Ranch, Inc., Respondent, including any ancillary documents thereto;
3. Any other documentation related to the settlement of claims by FWS and EPA against the Corporation.

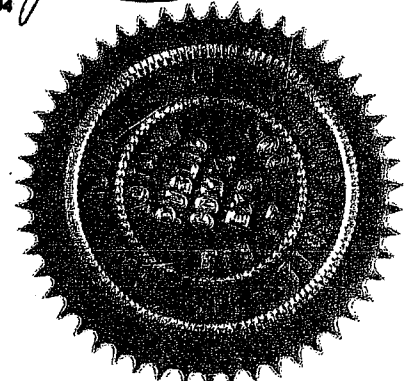
Mr. Denny's signature on such agreements shall be binding upon the Corporation in all respects.

IN WITNESS WHEREOF, this Written Consent is duly executed by the undersigned Sole Director as of the date first set forth above.


Pedro Olabarria Delclaux, Sole Director

Sworn and Subscribed to before me
This 27 Day of August 2002


Notary Public
Commission expires Feb. 27, 2004



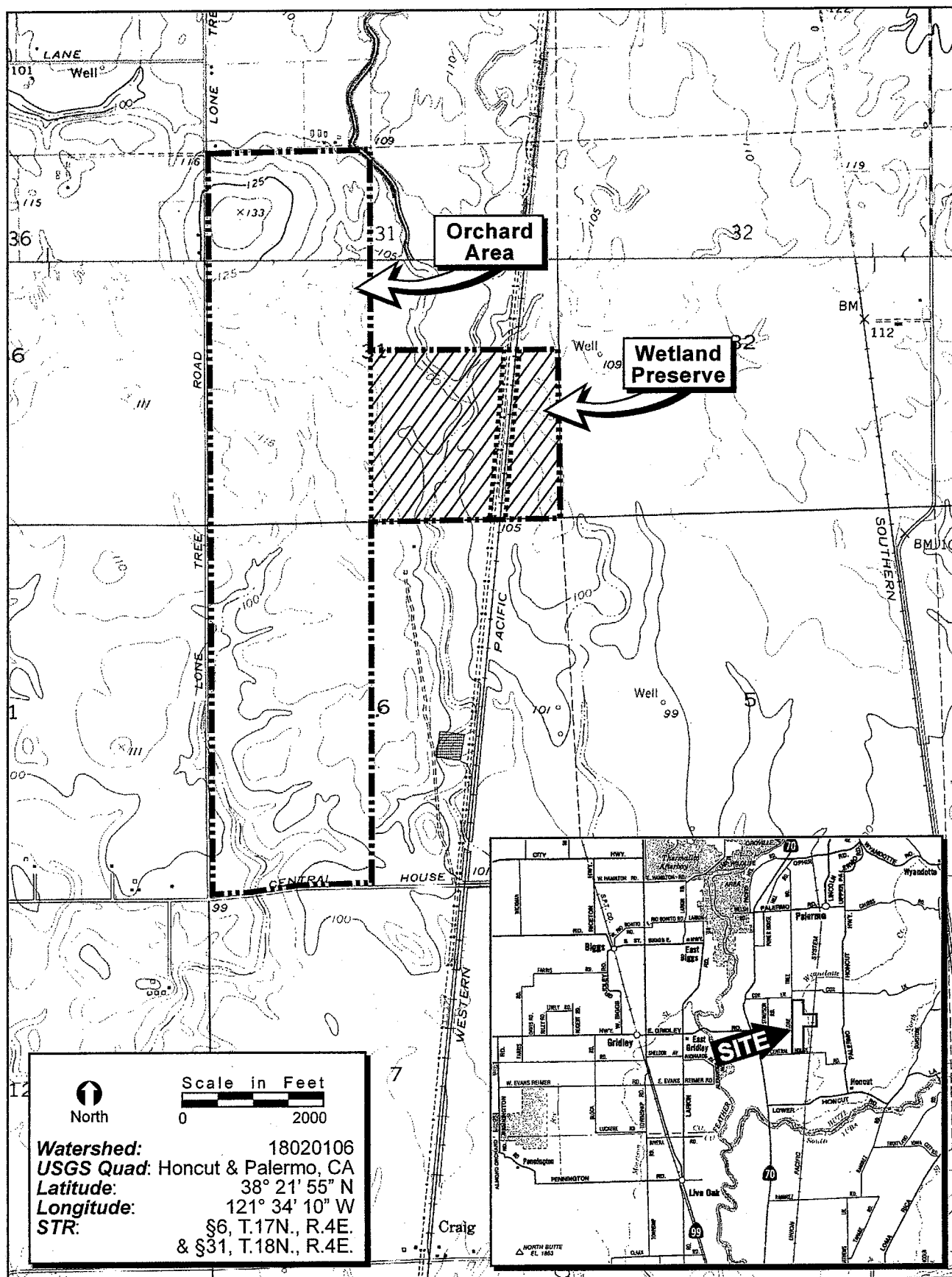


FIGURE 1. California Olive Ranch Orchard Area, Preserve Site #1 and Vicinity Map

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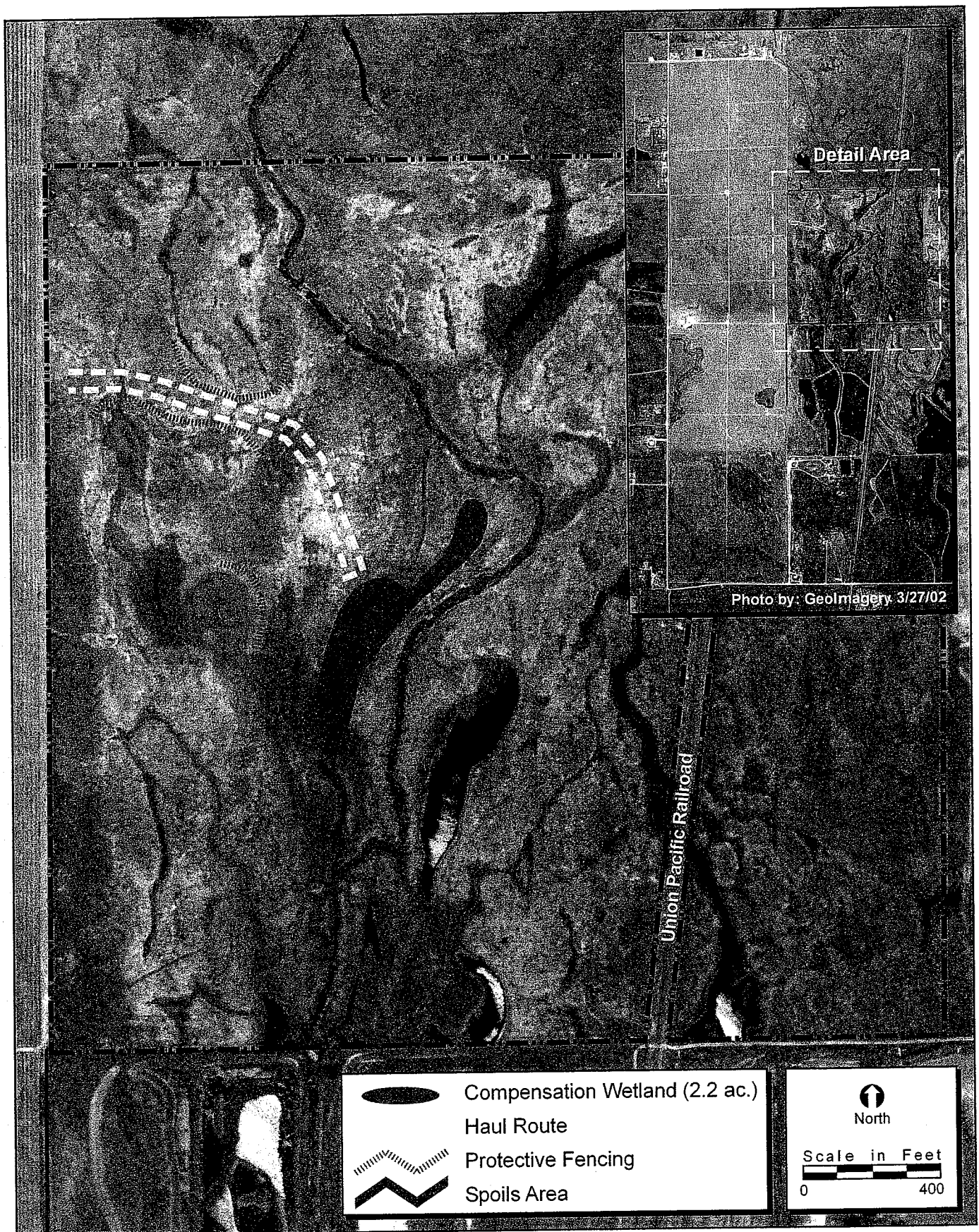


FIGURE 2. Compensation Wetland, Haul Routes, and Spoil Area Location Map

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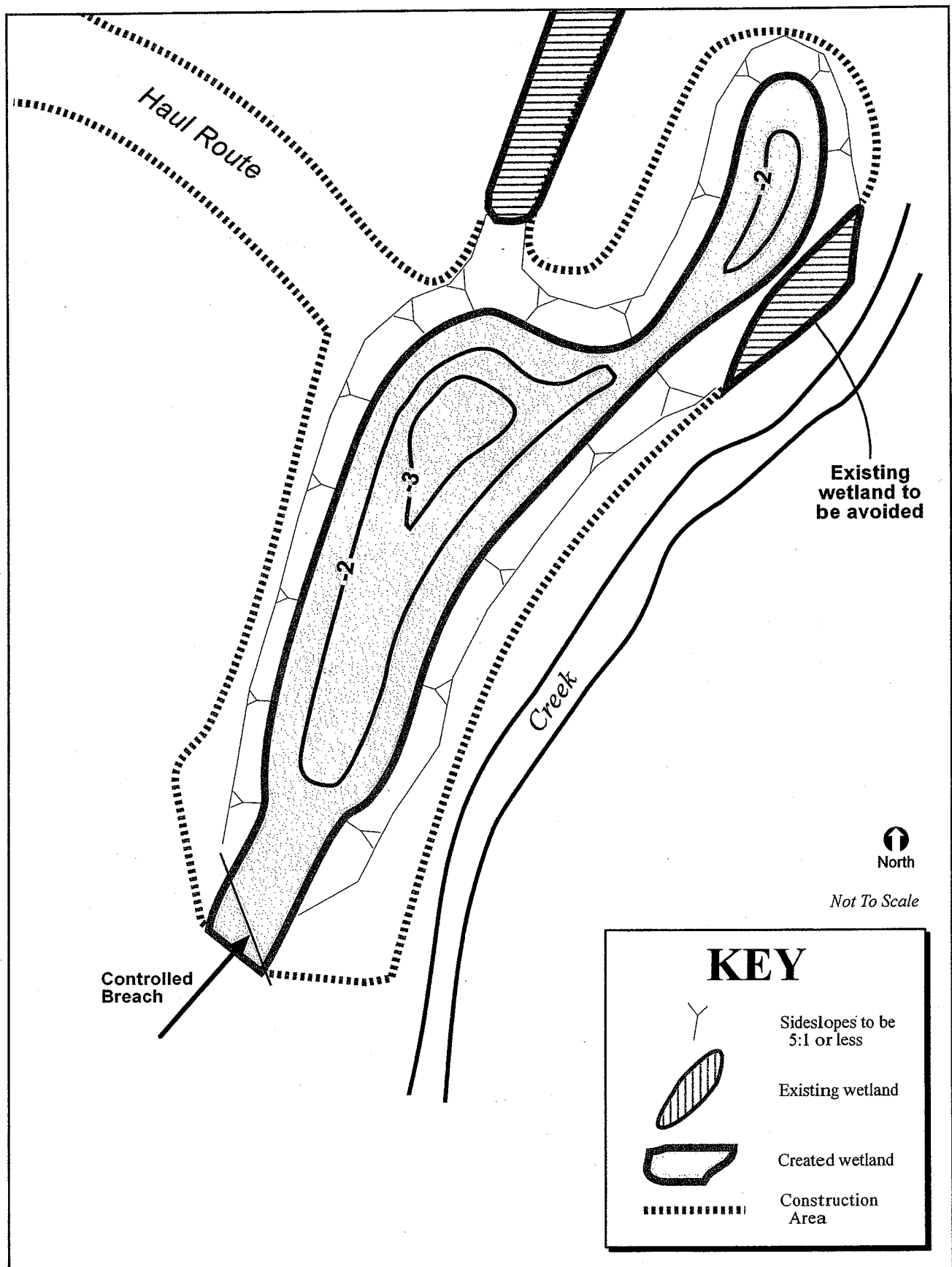


FIGURE 2. Conceptual Mitigation Design

2001-048 California Olive Ranch

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 ENVIRONMENTAL CONSULTANTS
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DESIGN SPECIFICATIONS

- Wetland Depth: 10 inches to 36 inches with deeper portions if desired.
- Side Slopes: No steeper than 5:1 except in locations constrained by creek edges and existing wetlands.
- Seed Source: Plugs of appropriate plant material collected from non vernal pool wetlands.
Excavated upland topsoil will be replaced to provide organic base for vegetation establishment.

TYPICAL CROSS SECTION

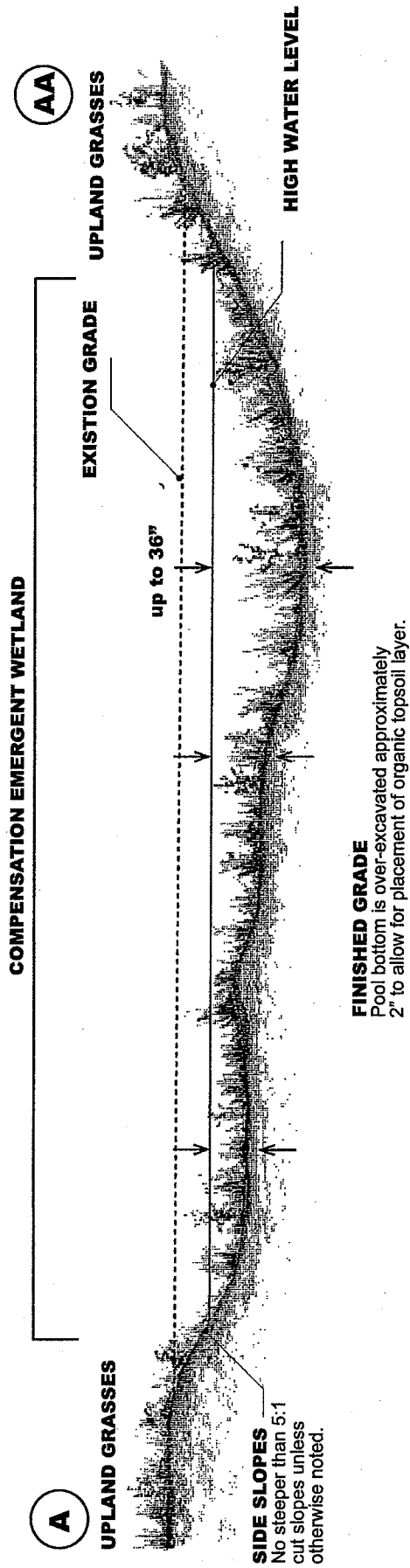
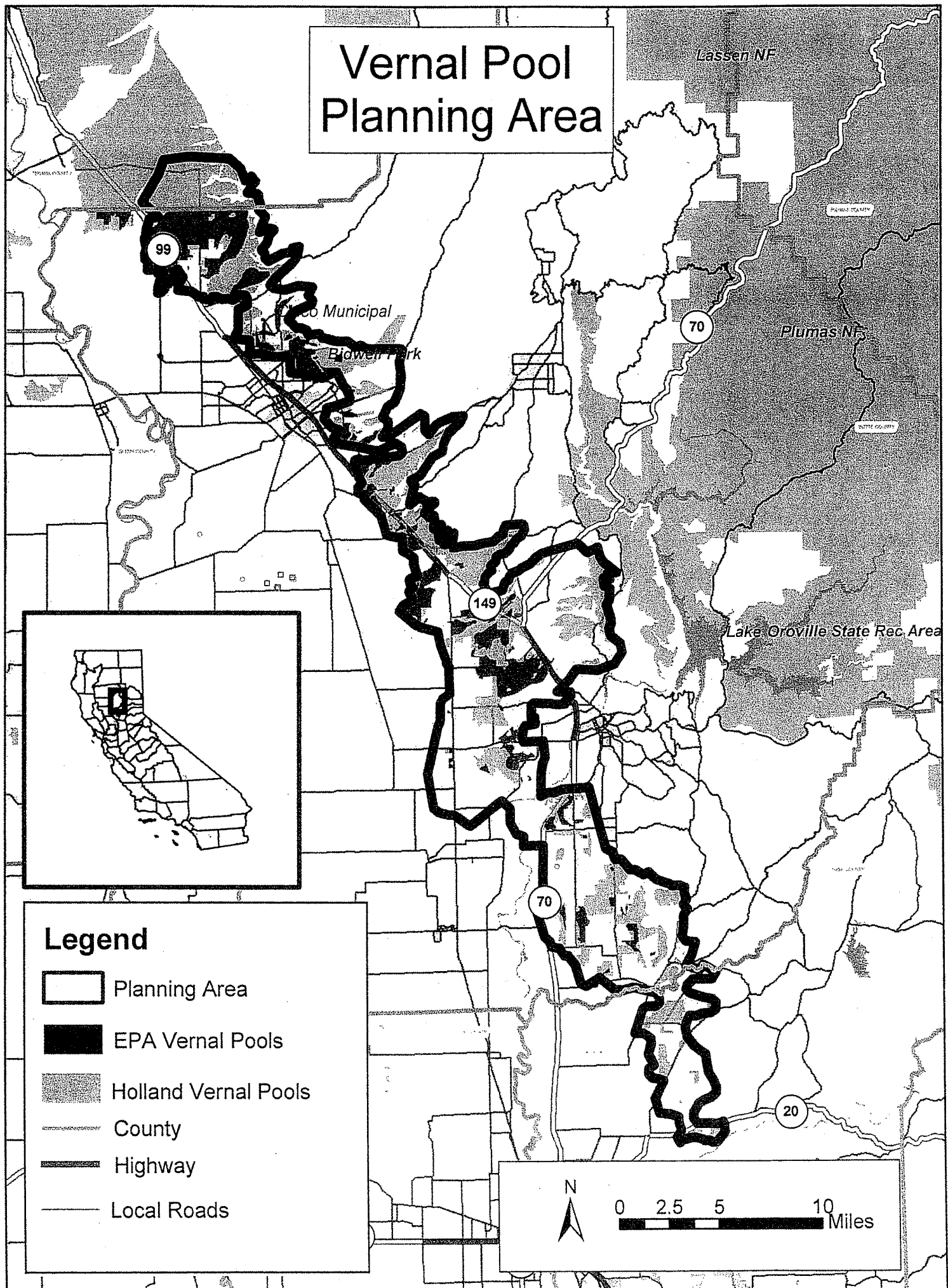


Figure 2. DESIGN SPECIFICATIONS AND TYPICAL CROSS SECTION OF COMPENSATION WETLAND. Not to scale.

FIGURE 3



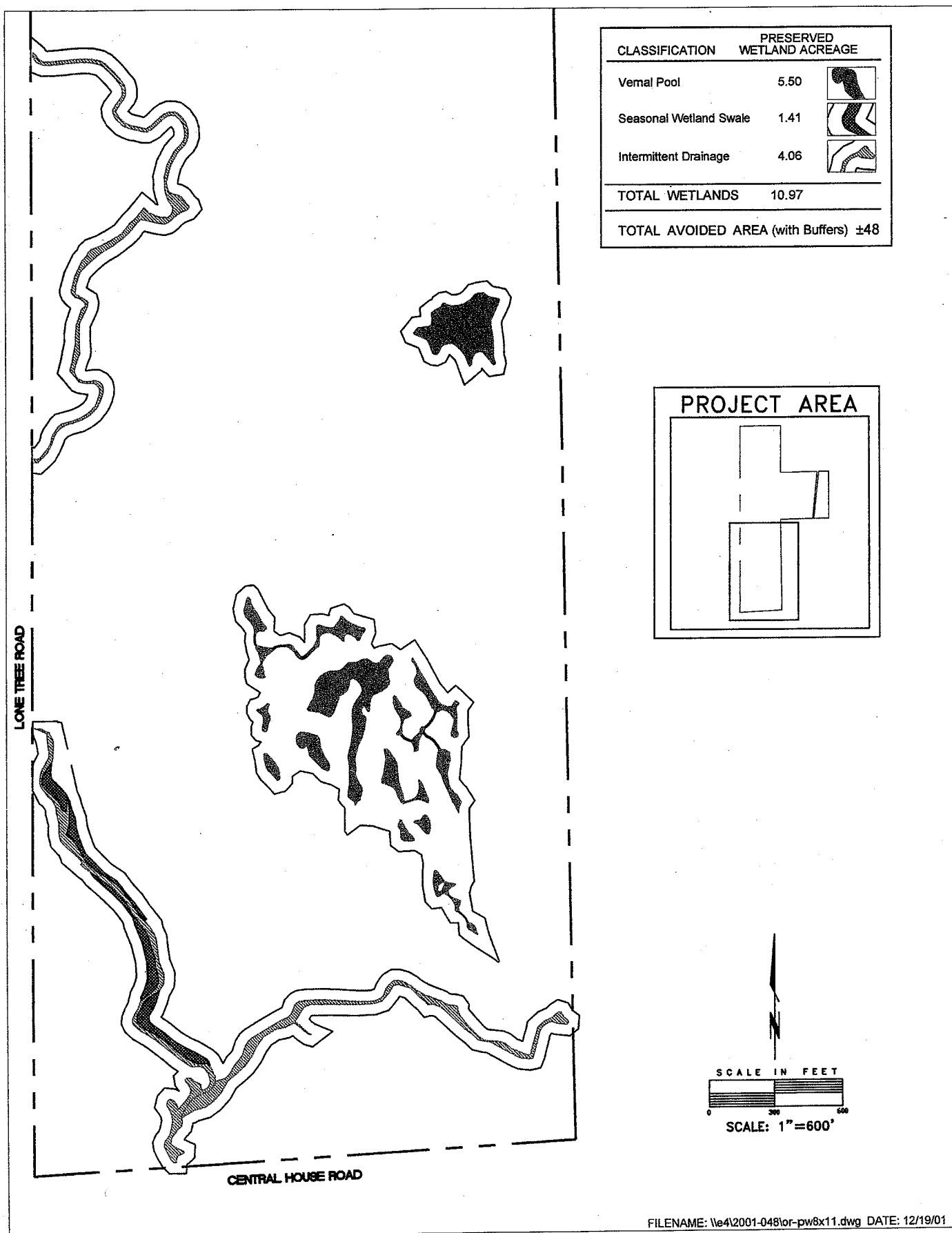


FIGURE 4. Avoided Wetlands

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